

PROJECT MANAGING UNIT 21 C. & D.S. U.P. JAL NIGAM V. MANAGING DIRECTOR, BANK OF BARODA & 4 ORS.

1. PROJECT MANAGING UNIT 21 C. & D.S. U.P. JAL NIGAM
HEAD OFFICE: T.C-38-V, VIBHUTI KHAND GOMIT
NAGAR,
LUCKNOW – 226010.

.....Complainant(s)

Versus

1. MANAGING DIRECTOR, BANK OF BARODA & 4 ORS.
BARODA CORPORATE SECTOR C-24, C BLOCK
BANDRAWALI COMPLEX BANDRA EAST
MUMBAI – 400 051.

2. BANK OF BARODA,
GENERAL MANAGER, VIBHUTIKHAND, GOMTI NAGAR,
LUCKNOW

3. BRANCH MANAGER,
BANK OF BARODA, GATEHGANJ ROAD,
FAIZABAD.

4. BRANCH MANAGER,
BANK OF BARODA, MAIN BRANCH
FAIZABAD.

5. BRANCH MANAGER,
BANK OF BAROADA, CHINHUT,
LUCKNOW.

.....Opp.Party(s)

Case No: CONSUMER CASE NO. 460 OF 2015

Date of Judgement: 11 Jan 2023

Judges:

HON'BLE MR. SUBHASH CHANDRA, PRESIDING MEMBER

For the Complainant : Mr Anubhava Mehrotra, Advocate with

Mr S K Tiwari, Advocate

For the Opp.Party : Mr Arun Aggarwal, Advocate

Facts:

Complainant is a government entity executing engineering projects in UP. It had accounts with Bank of Baroda branches. 18 unsigned cheques were reported stolen on 18.05.2012. FIR lodged. 3 out of these cheques worth Rs 1,46,27,000 were encashed by Bank of Baroda crediting the amount to an account of M/s Sara Construction in Chinhath branch. The encashed cheques had varying signatures as per forensic report. Sara Construction account was found to be fake. Complainant alleges deficiency in service by bank in allowing encashment of stolen cheques. Seeks refund of amount with interest and compensation.

Arguments:

Complainant:

Bank was negligent in allowing encashment of stolen cheques to fake account without checking signatures or account details properly. Supplementary reports show complicity of bank staff in clearing cheques. Despite complaints, bank has not refunded the amount.

Opposite Parties:

Theft and encashment seems handiwork of complainant's own employees. Cheques were not kept securely by them. Payments were made in normal course of business. No finding of negligence on part of bank. Matter is sub-judice in criminal case. Cannot determine liability in summary proceedings under

Consumer Act. Complainant barred by limitation as informed of account details earlier which they did not act upon.

Sections:

Section 21 of Consumer Protection Act 1986

Cases Referred:

Chairman & Managing Director, UCO Bank & Anr. Vs. Tax Publisher. Pradeep Kumar & Anr. Vs. Postmaster General & Ors

Court's Observations and Decision:

Preliminary objections on maintainability have no merit. Complaint is valid. However, theft intimation was not given nor payment stopping advice issued to bank regarding stolen cheques. Primary responsibility for cheque security lies with complainant. Reliance on cited cases not applicable as facts are different. No standing advice to bank prohibiting encashment. In absence of conclusive findings of alleged fraud, deficiency in service of bank cannot be determined. Complaint devoid of merit and dismissed.

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Court

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Full Text of Judgment:

1. This complaint under section 21 of the Consumer Protection Act, 1986 (in short, the 'Act') has been filed by the complainant alleging deficiency in service by the opposite party in allowing three cheques to be encashed by its branch although these were presented after being stolen from the possession of the complainant.

2. The facts of the case in brief, as stated by the complainant, are that it is an entity constituted under the Government of Uttar Pradesh (U.P.) which executes civil engineering projects for the Government of UP. It had different accounts with different branches of the opposite party, Bank of Baroda, including an account with the opposite

party no. 3 at its branch on Fatehganj – Faizabad Road, Faizabad, UP. The cheques were operated by the Unit Accountant and the Project Manager. It is stated that 18 unsigned cheques of 11 different accounts held with the opposite party were reported as stolen on 18.05.2012 by the Accountant to the Project Manager and an FIR no. 201/2012 was lodged on 19.05.2012 with the Police Station, Faizabad. It was seen discovered that three cheques were encashed as per details below:

SNo	Cheque and Account No.	Date of encashment	Amount (Rs)	Branch of Bank	Credited in name/account of
1	190597 006701000015085	14.05.2012	26,42,000	Bank of Baroda, Main Branch, Faizabad	M/s Sara Construction, A/c with Bank of Baroda, Chinhut, Lucknow
2	518188 2260100010540	15.05.2012	73,65,000	Bank of Baroda, Fatehganj Road, Faizabad	M/s Sara Construction, A/c with Bank of Baroda, Chinhut, Lucknow
3	51890 36480200000094	17.05.2012	46,20,000	Bank of Baroda, Fatehganj Road, Faizabad	M/s Sara Construction, A/c with Bank of Baroda, Chinhut, Lucknow 36480200000094

Information regarding the theft of the cheques was provided by Unit Accountant Nasir Ali to the Inspector of FIR, Bank of Baroda, Fatehganj, Faizabad Road branch on 19.05.2012. Following investigations by the police in the FIR filed, a charge sheet was filed in the court of the Chief Judicial

Magistrate, Faizabad that the Bank of Baroda, Chinhut Branch, Lucknow had negligently allowed encashment of the crediting of large sums of money in the bank account of M/s Sara Construction.

3. The complainant has stated that as per the investigation by Vidhi Vigyaan Prayogshala, U.P., Lucknow City in respect of cheques paid from the Bank of Baroda, Chinhut Branch the signatures on the cheques were handwritten and were different on each of the three cheques. As per the statement of the Bank Manager, the account of M/s Sara Construction was found to be fake since the name, address, documents, etc. were all found to be false. It is stated that the account was in the name of M/s Sara Construction whereas the cheque was issued in the name of Sara Construction. This account was opened on 04.05.2012 and the transfer of Rs 1,46,27,000/- done over 5 days between 14.05.2012 and 18.05.2012. It is averred that the account was opened without verifying the documents or address of the introducer and account holder. The proprietor of Sara Construction, Mohd. Khalid Usmani, son of Abdul Khalid had informed the Police during investigations that his firm Sara Construction & Suppliers is registered in the name of his wife whose bank account is with Syndicate Bank.

4. It is also averred that vide letter dated 309/S/561/16 dated 19.07.2012 the complainant's Head Office requested opposite party no.1 to refund the money which has not been done. Information sought under the Right to Information Act has also not been provided. The Banking Lokpal who was approached in the matter did not consider the request vide their letter dated 31.12.2012 on the ground that the amount involved exceeded its limit of Rs 10,000/-. As attempts with the opposite party at various levels had not succeeded, the complainant is before this Commission with the following prayer:

A. The complainant should be awarded Rs 1,46,27,000/- from 19.05.2012 to the date of payment from the respondents along with interest @ 12% per annum.

B. The complainant should be provided compensation of Rs 5,00,000/- against mental and physical loss from the respondents.

C. The complainant should be provided Rs 2,00,000/- as complaint expenses from the respondents.

D. Any other relief that the Hon'ble Forum find appropriate should be provided to the complainant from the respondent.

5. The complaint has been resisted by the opposite party by way of a reply. By way of preliminary objections it is stated that the complainant is not a 'consumer' under the purview of the Act as it is an organization and not an individual. It is submitted that this Commission may lack pecuniary jurisdiction since some amounts have already been recovered. It is contended that there has been misjoinder of parties by the impleading of senior officials of the opposite party as there is no allegation against them.

6. On merits, it is contended that the complaint is based on the FSL report dated 28.02.2013 which does not state that the alleged forgery of signatures could have been recovered by the collecting or payee banker. It is contended that this report has been selectively relied upon and that there are no conclusive findings either in favour of the complainant or against the opposite parties. The matter is still sub judice before the CJM at the preliminary stage. None of the opposite parties or its officials have been arrayed as accused in the case. The complainant has failed to disclose that 9 cheques went missing from his custody in April, 2012 and the action taken as a sequel to that. In fact, the complainant has been negligent in safeguarding its own valuables. It is contended that there is no finding against the opposite party that there had been negligence in allowing the cheques to be encashed without either scanning the signatures or through inspection by the eye and that no documents to this effect had been brought on record.

7. It is contended that a case of forgery cannot be pursued in

summary proceedings before this Commission. The responsibility for the encashment of cheques is attributable to the employees of the complainant according to the opposite party as the responsibility for the security of the cheques was that of the complainant. It is the contention of the opposite party that the cheques were not securely kept and that the presentation of cheques to the bank is the handiwork of officials of the complainant itself. The opposite party states that the payments were made in the normal course of business by the bank and that it is the employees of the complainant who are responsible for any act of commission or omission in the siphoning of funds. It is also stated that as the cheque was presented towards end of business hours on 18.05.2012, its discovery the same day was strange.

8. It is also denied that the account of Sara Construction was fake or that the opposite party or its employees had any role in the payment of the cheques as no challan has been produced by the complainant in support. It is stated that the complainant is barred by limitation which is evidenced by the letter dated 27.06.2013 from the Sr. Branch Manager, Bank of Baroda, Chinhat, Lucknow to the Project Manager, Unit 21, Construction & Design services, 01/13/2/C Nayyar Colony, Faizabad providing details of M/s Sara Construction's Current Bank Account No. 364802/94 and that the complainant has deliberately remained inactive in order to approach this Commission. It is prayed that the complaint be dismissed.

9. Parties led their evidence by way of affidavit and filed rejoinder. I have heard the learned counsel for both sides and carefully perused the material on record. Written arguments were filed by both parties.

10. The learned counsel for the complainant argued as per the complaint filed. Essentially it was submitted that the liability for clearing the cheques for payment to a fictitious account opened in another branch of the opposite party amounted to negligence and deficiency in service. In support of its argument, the learned counsel for the complainant relied upon the judgment of the Hon'ble Supreme Court in

Chairman & Managing Director, UCO Bank & Anr. Vs. Tax Publisher in Civil Appeal No. 31789 of 2017 dated 31.08.2017 which involved encashment of two cheques of approx. Rs 31 lakhs from the account of the respondent and the respondent alleged that the cheques were stolen and did not bear genuine signatures, it was laid down that:

We find merit in the contention raised on behalf of the petitioners that there has to be full and proper adjudication if liability is to be fastened on the petitioners. There is serious dispute whether the cheques carried genuine signatures in which case even if there was some negligence on the part of the concerned employee of the bank, the bank may not be liable for damages. In any case, liability of the bank may not be in entirety as safe custody of cheques was responsibility of the respondent. At the same time, Bank account be entirely free from blemish. Having regard to the entirety of the matter, we are of the view that the claim of the respondent ought to be satisfied by paying a total amount of Rs 50,00,000/- by the petitioners to the credit account of the

respondent within one month from today. Upon the said amount being paid, the litigation between the parties will stand concluded but the petitioners shall be entitled to take remedy to recover the amount from any person which has wrongfully withdrawn this amount. The special leave petition is, accordingly, disposed of. Reliance has also been placed upon the judgment of the Hon'ble Supreme Court in Pradeep Kumar & Anr. Vs. Postmaster General & Ors. (2022) 6 SCC 351 in CA Nos. 8775-76 dated 07.02.2022 relating to the repayment in cash of a Kisan Vikas Patra for Rs 25,54,000/- in violation of an order mandating payment of amounts exceeding Rs 20,000/- to be by cheque and not in cash, that

"acts of bank/post office employees, when done during their course of employment, are binding on the bank/post office at the instance of the person who is damnified by the fraud and wrongful acts of the officers of the bank/post office".

12. On behalf of the opposite party it was argued that no

prior information was provided by the complainant to it to stop payment of the cheques alleged to have been stolen from its custody. Negligence of the complainant is also alleged citing the theft of 9 cheques earlier in April 2012 which has not been disclosed by them nor the remedial measures instituted brought out. In fact, there was no communication made to the opposite party to stop payment of cheques. It was submitted that payment of Rs 28,96,526/- was in fact stopped by the opposite party no. 5 on being apprised of the same and therefore there was no negligence/ deficiency in service. It is argued that the complaint is premature as the matter was sub judice before the Chief Judicial Magistrate with regard to the alleged fraud. It is denied that there was any complicity of the Bank/opposite party in the opening of the account in the name of M/s Sara Constructions which was as per the defined process.

13. The preliminary objections of the opposite party relating to the maintainability of the complaint on the grounds of (a) the complainant being a 'consumer' under the provisions of the Act, (b) whether the pecuniary jurisdiction of this Commission permits the filing of the complaint as some money 'may' have been recovered, and (c) whether the complaint is barred by limitation have been considered. The Act recognises a 'complainant' to include the State government under Section 2(i)(b)(iii). Banking is also a service recognised under the Act as per section 2(i)(o). The issue of pecuniary jurisdiction raised is speculative and clearly non est as the opposite party has not led any evidence to support his contention. On the issue of limitation, the opposite party contends that all concerns of the complainant were addressed. This argument is, however, not sustainable as the complainant has been raising issue with the opposite party which provide a continuing cause of action. The complaint is, therefore, valid.

14. In so far as the merits of the complaint are concerned, from the foregoing it is evident that the issue raised by the complainant though this complaint, i.e. the

encashment/transfer of Rs 1,46,27,000/- by cheques that were genuine is yet to be conclusively proved. The issue is admittedly currently pending before the CJM's court, Faizabad. The issue of whether the account of 'Sara Construction' and the encashment/transfer of cheques are genuine or an act of fraud will be established only on the basis of the findings of the court. It is striking that despite the fact of the encashment of non-genuine cheques that were stolen from the custody of the complainant having come to its notice on 18.05.2012, no formal letter for stopping payment of such cheques was submitted to the Bank/opposite party. The complainant has not brought any letter on record. The previous instance of loss of 9 cheques in April, 2012 alleged by the opposite party has neither been refuted by the complainant nor the remedial steps to prevent such instances recurring brought out. The fact that the responsibility for the safe custody of the cheques is primarily that of the complainant has been rightly brought out by the opposite party.

15. Complainant's reliance on Chairman & Managing Director, UCO Bank & Anr. Vs. Tax Publisher (supra) and Pradeep Kumar & Anr. Vs. Postmaster General & Ors. (supra) cannot be considered since the facts of both cases are distinguishable from those of the instant case. The theft of the cheques was not intimated to the opposite party nor did instructions issue to not honour any of the stolen cheques, if presented. There are no standing instructions to the bank prohibiting the cash withdrawal by way of a cheque that has been brought on record. Therefore, the complainant's case that the opposite party and its officials are responsible for the encashment of the three cheques and that it should be compensated cannot be sustained.

16. In view of the foregoing, the complaint is found to be without merit and is accordingly dismissed.